

Notice of Allowability

Application No.

09/939,385

Examiner

Traviss C. McIntosh

Applicant(s)

LEVINE, SCOTT

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 6/24/2005.
2. ☒ The allowed claim(s) is/are 24-41 and 64-74.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

JAMES O. WILSON

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Scott Levine on August 18, 2005.

The application has been amended as follows:

In the claims:

Claim 24 (currently amended): An orally administered nutritional supplement for ingestion by mammals containing at least 7 grams of fiber per serving comprising a composition comprising:

- (a) a mixture of guar, oat, and psyllium fibers, plus,
- (b) at least one flavoring agent, and,
- (c) admixed with at least one potable liquid to create a beverage.

Claim 26 (currently amended): The nutritional supplement of claim 24 wherein the supplement is an edible food product selected from the group consisting of liquid food products and semisolid food products.

Art Unit: 1623

Claim 27 (currently amended): The nutritional supplement according to claim 24, in which the at least one potable liquid is admixed in sufficient quantity to create at least an 8 ounce beverage.

Claim 37 – in line 3, between the words “mixture” and “guar” the term “of” has been inserted wherein the claim now reads “a mixture **of** guar, oat, and psyllium”.

Claim 39 (currently amended): The method according to claim 37, further comprising:

- (a) admixing the composition to create a semisolid food product,
- (b) said semisolid food product to be accompanied by consumption of sufficient quantity of at least one potable liquid to further hydrate the consumed fiber.

Claims 42-63 are canceled.

Claim 65 – in line 4, between the words “mixture” and “guar” the term “of” has been inserted wherein the claim now reads “a mixture **of** guar, oat, and psyllium”.

Claim 70 – in line 3, between the words “mixture” and “guar” the term “of” has been inserted wherein the claim now reads “a mixture **of** guar, oat, and psyllium”.

Art Unit: 1623

In the specification:

On page 11, the bottom line, the phrase “the www.Herbalife.com website does not list the recommended” has been deleted and the phrase “the Herbalife website does not list the recommended” has been inserted in its place.

Pursuant to MPEP 608.01, the specification cannot contain hyperlinks or other browser-executable code.

The following is an examiner’s statement of reasons for allowance: the prior art is not seen to teach or fairly suggest compositions comprising at least 7 grams of fiber selected from the group consisting of oat, guar, and psyllium, and a flavoring agent, which is admixed with a liquid to create a beverage. The prior art teaches solid compositions, and one of skill in the art would not find it obvious to form a beverage out of said fibers due to their normal gelling properties in liquids.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

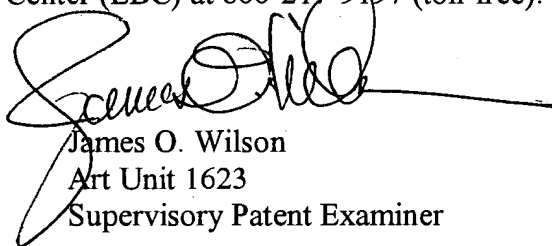
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traviss C. McIntosh whose telephone number is 571-272-0657. The examiner can normally be reached on M-F 9:30-6:00.

Art Unit: 1623

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Traviss C. McIntosh III
August 19, 2005



James O. Wilson
Art Unit 1623
Supervisory Patent Examiner